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April 25, 2007

## Appropriations Policy Brief

### H.R. 1591 — Making Emergency Supplemental Appropriations for FY 2007

#### Conference Report

#### BY THE NUMBERS:

In millions

	Request	Senate	House	Conference
GWOT (including Foreign Aid)	99,620	103,981	111,303	109,295
Agriculture Assistance	0	4,192	3,726	3,500
Misc. (including Hurricane Relief)	3,400	14,196	8,838	10,995
SCHIP Shortfall Funding	0	448	463	393
Minimum Wage/Tax Relief	NA	NA	NA	NA
<b>Total</b>	<b>103,020</b>	<b>122,817</b>	<b>124,330</b>	<b>124,183</b>

Budget Compliance: H.R. 1591 designates the entire \$124.2 billion in funding as some form of an emergency to avoid the constraints of the FY 2007 budget resolution, with its \$873 billion discretionary cap. It does so in two respects: First, the bill designates \$102.3 billion as funds directly related to the Global War on Terror. Section 402 of H.Con.Res. 376 (the FY07 budget resolution, which the Majority deemed until the passage of the FY 2008 budget resolution) provides a broad exemption for spending that funds “contingency operations directly related to the global war on terrorism, and other unanticipated defense-related operations.”

Second, the bill designates the rest of the funding as an “emergency” to similarly avoid budget restrictions. However, H.Con.Res. 376 included a limit on spending for domestic emergencies. This “rainy day fund,” inserted at the behest of the RSC, caps this type of spending at \$6.45 billion. With perhaps \$14.9 billion in such emergency funding, H.R. 1591 exhausts this fund and thus violates the budget resolution by roughly \$8.45 billion. As a result, since the Budget Committee did NOT meet in open session and increase the amount of funding in the reserve fund, the bill would be subject to a point of order on the floor for violating the Budget Act. Unfortunately, the point of order is waived by the rule. In addition, most of these “emergencies” do not meet the budget’s criteria for such spending (sudden, unforeseen, temporary, urgent, etc.), causing many conservatives to conclude that the Appropriations Committee is utilizing a major gimmick to avoid budget restraints.

PAYGO Compliance: According to the Budget Committee (Minority), H.R. 1591 includes \$5.8 billion over eleven years in new entitlement spending that should be paid for under the Majority’s PAYGO rule. Since the legislation does not offset this funding, a PAYGO point of order should be in order against the bill. However, the rule waives all points of order.

## **Global War on Terror Funding (Title I):**

*In millions*

<b>Department of Defense</b>	<b>Request</b>	<b>Senate</b>	<b>House</b>	<b>Conference</b>
Military Personnel	12,145	13,435	13,566	13,508
Operations & Maintenance	50,316	48,784	52,499	50,430
<i>Afghanistan Security Fund</i>	5,906	5,906	5,906	5,906
<i>Iraq Security Fund</i>	3,842	3,842	3,842	3,842
<i>Iraq Freedom Fund</i>	206	456	156	356
<i>Joint Improvised Explosive Device Defeat Fund</i>	2,433	2,433	2,433	2,433
<i>Strategic Reserve Readiness Fund</i>	0	0	2,500	2,000
Procurement	24,900	24,508	24,814	25,592
R&D, Test & Evaluation	1,448	1,190	1,035	1,099
Defense Working Capital Fund	1,316	1,321	1,316	1,321
Drug Interdiction & Counter Drug Activities	259	255	259	255
Intelligence Community Management Account	67	72	57	72
Defense Health Program	1,073	2,467	2,790	3,252
National Defense Sealift Fund	5	5	5	5
Military Construction	1,854	4,914	4,916	4,806
<i>DoD Base Closure Account</i>	0	3,136	3,136	3,136

<b>Department of Agriculture</b>	<b>Request</b>	<b>Senate</b>	<b>House</b>	<b>Conference</b>
P.L. 480, Title II Grants	350	475	450	460
Bill Emerson Humanitarian Trust	0	82	0	40
<b>Department of Homeland Security</b>				
Departmental Management & Operations	0	0	35	15
Customs and Border Protection	0	140	100	115
Air & Marine Interdiction	0	75	150	120
US Immigration and Customs Enforcement, Salaries and Expenses	0	20	0	10
Transportation Security Administration	0	660	1,250	970
Federal Air Marshals	0	15	0	8
Infrastructure Protection & Information Security	0	18	25	37
Office of Health Affairs	0	18	0	15
FEMA, Salaries & Expenses	0	20	25	25
FEMA, State and Local Programs	0	850	415	553
FEMA, Emergency Management Performance	0		100	100
US Citizenship and Immigration Services	0	30	0	10

Science and Technology, Research, Development, Acquisition, and Operations	0	15	0	10
Domestic Nuclear Detection Office, Research, Development and Operations	0	39	0	39
Domestic Nuclear Detection Office, Systems Acquisition	0	0	400	224
<b>Department of Energy</b>				
Defense Nuclear Nonproliferation	63	63	150	150
<b>Department of Justice</b>				
General Legal Activities, Salaries & Expenses	4	4	2	2
U.S. Attorneys, Salaries & Expenses	5	13	5	5
U.S. Marshals, Salaries & Expenses	15	33	3	6
National Security Division	2	2	2	2
FBI, Salaries & Expenses	118	348	118	268
Drug Enforcement Administration	8	25	8	12
Bureau of Alcohol, Tobacco, Firearms, and Explosives, Salaries and Expenses	4	4	4	4
Federal Prison System	17	17	17	17
<b>Legislative Branch</b>				
House of Representatives, Salaries & Expenses	0	0	6	6
<b>Department of State</b>				
Diplomatic and Consular Affairs	913	816	967	871
Inspector General	35	37	47	37
Education and Cultural Exchange Programs	20	10	20	20
International Organizations Contributions to International Organizations	0	59	0	50
International Peacekeeping Activities	200	200	288	288
International Broadcasting Operations	10	10	10	10
Bilateral Economic Assistance, Child Survival and Health Programs Fund	0	161	161	161
International Disaster and Famine Assistance	0	187	135	165
US Agency for International Development, Operating Expenses	0	6	11	9
US Agency for International Development Office of Inspector General	0	4	4	4
Economic Support Fund	3,025	2,602	2,953	2,649
Assistance for Eastern Europe	279	214	239	229
Department of State Democracy Fund	0	465	0	260
International Narcotics Control	260	210	335	257
Migration and Refugee Assistance	72	143	112	131

U.S. Emergency Refugee & Migration Assistance	30	55	35	55
Nonproliferation, Antiterrorism, & Demining	28	28	88	58
<b>Department of Treasury</b>				
International Affairs Technical Assistance	3	3	3	3
<b>Funds Appropriated to the President</b>				
Foreign Military Financing Program	220	220	260	265
Peacekeeping Operations	278	323	225	230

### **Iraq Policy Section:**

*Note: All language in this section is the same as that in the House-passed version of the Supplemental, except where noted.*

**Mission Capable Units in Iraq:** Prohibits funds from being used to deploy any unit of the Armed Forces to Iraq, unless the chief of the military department concerned has certified in writing to Congress at least 15 days in advance of the deployment that the unit is “fully mission capable” (“capable of performing assigned mission essential tasks to prescribed standards under the conditions expected in the theater of operations, consistent with the guidelines set forth in the Department of Defense readiness system”).

**Deployment Time in Iraq:** Prohibits funds from being used to initiate the development of, continue the development of, or execute any order that has the effect of extending the deployment or redeployment for Operation Iraqi Freedom in violation of a 365-day maximum (for the Army, Army Reserve, and the National Guard) or a 210-day maximum (for the Marines and Marine Reserves).

**Presidential Certification on Benchmarks:** Requires that the President certify to Congress by July 1, 2007:

- “whether the Government of Iraq has given United States Armed Forces and Iraqi Security Forces the authority to pursue all extremists, including Sunni insurgents and Shiite militias, and is:
  - making substantial progress in delivering necessary Iraqi Security Forces for Baghdad and protecting such Forces from political interference;
  - intensifying efforts to build balanced security forces throughout Iraq that provide even-handed security for all Iraqis;
  - ensuring that Iraq’s political authorities are not undermining or making false accusations against members of the Iraqi Security Forces;
  - eliminating militia control of local security;
  - establishing a strong militia disarmament program;
  - ensuring fair and just enforcement of laws;
  - establishing political, media, economic, and service committees in support of the Baghdad Security Plan; and

--eradicating safe havens;

- “whether the Government of Iraq is making substantial progress in meeting its commitment to pursue reconciliation initiatives, including:
  - enactment of a hydro-carbon law;
  - adoption of legislation necessary for the conduct of provincial and local elections;
  - reform of current laws governing the de-Baathification process;
  - amendment of the Constitution of Iraq; and
  - allocation of Iraqi revenues for reconstruction projects;
- “whether the Government of Iraq and United States Armed Forces are making substantial progress in reducing the level of sectarian violence in Iraq; and
- “whether the Government of Iraq is ensuring the rights of minority political parties in the Iraqi Parliament are protected.”

**NOTE: The House-passed Supplemental had some of the above benchmarks (but not all) and included a certification date of October 1, 2007. In neither legislation are such key terms as “making substantial progress,” “intensifying efforts,” or “fair and just enforcement” defined.**

**Withdrawal from Iraq:** If the President is unable to make the above certification by July 1, 2007, or if the above report indicates that any of the required conditions in Iraq have not been met, the Secretary of Defense would have to commence the withdrawal of the Armed Forces from Iraq and complete such withdrawal within 180 days. Even if the President makes the required certification, the troop withdrawal from Iraq would have to begin by October 1, 2007, and be completed within 180 days. Funds in this Act or any other Act would be immediately available to fund the withdrawal.

**NOTE: The House-passed Supplemental contained the two-tiered withdrawal dates of October 1, 2007 and March 1, 2008, rather than the July 1, 2007 and October 1, 2007, in the conference report.**

**Prohibited Return to Iraq:** Once the withdrawal from Iraq is complete, U.S. Forces could not be sent to or retained in Iraq for any purpose except for certain diplomatic and training missions, or limited, targeted special actions against terrorists.

**Funds Withheld:** Withholds 50% of the funds appropriated by this bill for the Economic Support Fund (except for the U.S. Agency for International Development’s pro-democracy funds for Iraq) and International Narcotics Control and Law Enforcement, until the President has certified that the Government of Iraq has:

- “enacted a broadly accepted hydro-carbon law that equitably shares oil revenues among all Iraqis;

- “adopted legislation necessary for the conduct of provincial and local elections, taken steps to implement such legislation, and set a schedule to conduct provincial and local elections;
- “reformed current laws governing the de-Baathification process to allow for more equitable treatment of individuals affected by such laws;
- “amended the Constitution of Iraq consistent with the principles contained in article 137 of such constitution [regarding the protection of existing Kurd laws, regulations, and court judgments]; and
- “allocated and begun expenditure of \$10 billion in Iraqi revenues for reconstruction projects, including delivery of essential services, on an equitable basis.”

**NOTE:** The House-passed Supplemental required withholding from the Iraq Security Forces Fund as well, and triggered the full release of the funds on the complete presidential certification required by this legislation. In the conference report, the full release is triggered by the certification of a separate list of benchmarks, some of which are required in the full certification above, and some of which are not. The funds-release benchmarks are exactly the same as the full certification benchmarks in the House-passed Supplemental.

**Assessment Report:** Directs the Multinational Forces Commander in Iraq and the U.S. Ambassador to Iraq to jointly report to Congress every 60 days (beginning on September 1, 2007) on the current progress being made by the Government of Iraq regarding the full list of withdrawal-related benchmarks. **Such a report was not required in the House-passed Supplemental.**

**Possible Conservative Concerns:** Some conservatives might be concerned that this legislation would undermine the constitutional authority of the President as Commander-in-Chief. Furthermore, some conservatives might be concerned that this bill would give strength to our enemy by showing American weakness and encouraging our enemy to either wait until after the deadlines in this legislation to launch more attacks and/or to focus their current attacks on ensuring that one or more of the benchmarks required for the presidential certification are not met.

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### **Items of Note:**

**Strategic Reserve Readiness Fund:** Provides \$2 billion to establish a new fund to train and equip non-deployed U.S. military forces to improve their readiness. According to the Committee, “reported readiness levels are sufficient for forces at home bases. Training readiness is significantly diminished for units at home station due to personnel turnover, equipment shortages, and the short turnaround between combat turnovers.”

**Transfer of Funds:** Allows the Secretary of Defense to transfer up to \$3.5 billion of the funds made available to the Department of Defense upon his determination that it is in the

national interest to do so. During FY07, the Secretary of Defense may also transfer \$6.3 billion in of the amounts credited to Defense Cooperation Account.

**Torture Prohibition:** Prohibits the use of funds to negate a series of laws and regulations promulgated to implement the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

**Counter-Drug Activities in Afghanistan/Pakistan:** Limits the amount of funding for counter-drug activities for Afghanistan and Pakistan to \$60 million.

**Commander's Emergency Response Program:** Provides \$456 million for the Commander's Emergency Response Program to allow military commanders in Iraq and Afghanistan to respond to urgent humanitarian and reconstruction needs.

**Inspection of Military Medical Treatment Facilities and Military Housing:** Requires the Secretary of Defense to inspect each military medical/housing facility to ensure that the facility meets acceptable standards.

**Assistance to Government of Iraq to Support Disarmament:** Allows \$156 million of funding provided for Iraq Security Forces Fund to be used to provide assistance to the government of Iraq to support the "disarmament, demobilization, and reintegration of militias and illegal armed groups.

**Transfer of Funds to Military Construction:** Transfers \$6 million from the FY06 Defense Appropriations bill to Military Construction, Army.

**Transfer of Funds to Pakistan:** Allows up to \$110 million to be transferred from the Department of State Economic Support Fund to support programs in Afghanistan.

**Military Bases in Iraq:** Prohibits the use of \$275 million in military construction funds unless the Secretary certifies that none of the funds are being used to establish permanent basin of U.S. military personnel in Iraq.

**Walter Reed Army Medical Center:** Prohibits closure of Walter Reed Army Medical Center until equivalent facilities have been constructed and equipped.

**Base Realignment and Closure Funding:** Provides \$3.1 billion for the Base Realignment and Closure Account to fulfill the Administration's FY07 request. The omnibus appropriations bill (H.J.Res. 20) provided \$2.5 billion for such needs. However, some conservatives may be concerned that all of this funding should have been provided in the omnibus bill, where it would have been subject to budget constraints. Instead, the Appropriations Committee delayed this funding to the supplemental, freeing up dollars within the budget for lesser priorities.

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## **Hurricane Relief (Title II):**

*In millions*

	<b>Request</b>	<b>Senate</b>	<b>House</b>	<b>Conference</b>
<b>Department of Commerce</b>				
NOAA, Operations, Research, & Facilities	0	166	120	110
NASA, Exploration Capabilities	0	0	35	35
<b>Department of Justice</b>				
Office of Justice Programs	0	170	0	50
<b>Department of Defense</b>				
Army Corps of Engineers	0	1,558	1,337	1,433
<b>Small Business Administration</b>				
Disaster Loan Program Account	0	25	25	25
<b>Department of Homeland Security</b>				
FEMA, Disaster Relief Fund	3,400	4,310	4,310	4,610
<b>Department of the Interior</b>				
Historic Preservation Fund	0	15	0	10
<b>Department of Education</b>				
Hurricane Education Recovery	0	30	30	30
Higher Education	0	30	30	30
<b>Department of Transportation</b>				
Federal Aid Highways, Emergency Relief Program	0	389	0	683
Federal Transit Administration, Formula Grants	0	75	0	35
<b>Department of HUD</b>				
Inspector General	0	5	10	7

### **Items of Note:**

**NASA:** Provides \$35 million to NASA, under the “exploration capabilities” account, for “expenses related to the consequences of Hurricane Katrina.” The bill also provides that of the amounts previously appropriated to NASA, \$48 million may be used to reimburse hurricane-related costs incurred by NASA in FY 2005.

**Corps of Engineers:** Provides \$1.4 billion to Corps of Engineers for continued repairs on the levee system in New Orleans.

**Small Business Administration:** Provides \$25 million to the SBA for additional funding to carry out the Disaster Loan Program.

**FEMA:** Provides \$4.6 billion for disaster relief at the Federal Emergency Management Agency (FEMA), of which \$4 million is to be transferred to the Office of the Inspector General. The bill extends from 12 months to 24, the time frame in which FEMA can provide funds to pay for utility costs resulting from the provision of temporary housing utilities to Hurricane Katrina evacuees. In addition, the supplemental would eliminate the



state and local matching requirements for certain FEMA assistance (in connection with Hurricanes Katrina, Rita, Wilma, and Dennis) in the states of Alabama, Louisiana, Mississippi, Texas, and Florida, and provides that the federal portion of these costs will be 100%.

**Office of Inspector General:** Provides \$7 million for the Office of Inspector General for “necessary expenses related to the consequences of Hurricane Katrina and other hurricanes of the 2005 season.”

**K-12 Education Funding for Hurricane States:** Provides \$30 million to Louisiana, Mississippi, and Alabama for recruiting and compensating teachers and principals in schools affected by Hurricanes Katrina and Rita, for the implementation of “high-quality formative assessments,” and the “establishment of partnerships with nonprofit entities with a demonstrated track record in recruiting and retaining outstanding teachers and other school leaders.”

**Higher Education Funding for Hurricane States:** Provides \$30 million in assistance to institutions of higher education located in a disaster area related to the 2005 Gulf of Mexico Hurricanes.

**Federal Highway Administration Rescission:** Rescinds \$683 million from unused highway spending.

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### **Other Emergency Appropriations (Title III):**

<i>In millions</i>				
	<b>Request</b>	<b>Senate</b>	<b>House</b>	<b>Conference</b>
NOAA, Commerce	0	60	60	60
Corps of Engineers	0	3	0	3
Flood Control and Coastal Emergencies	0	150	0	150
Water and Related Resources, Interior	0	18	0	18
Bureau of Land Management, Interior	0	100	100	100
Fish & Wildlife Services, Interior	0	7	7	7
National Park Service, Interior	0	1	1	1
U.S. Geological Survey, Interior	0	5	5	5
Forest Service	0	12	0	12
Wildlife Fire Management	0	400	400	400
CDC	0	17	0	63
Secure Rural Schools, USDA	0		400	425
LIHEAP	0	640	400	400
Public Health & Social Services Fund (Avian Flu)	0	820	970	625
Covered Countermeasure Process	0	50	50	25

Fund				
Architect of the Capitol	0	25	50	50
VA, Medical Services	0	454	415	467
VA, Medical Administration	0	250	256	250
VA, Medical Facilities	0	595	595	595
VA, Medical and Prosthetic Research	0	30	35	33
VA, Departmental Administration	0	46	62	83
VA, Information Technology Systems	0	36	35	35
VA, Construction Minor Projects	0	356	260	326

### **Items of Note:**

**National Oceanic and Atmospheric Administration (NOAA):** Provides \$60.4 million for the National Marine Fisheries Service under NOAA to be distributed among fishing communities, Indian tribes, individuals, small businesses, including fishermen, fish processors, and related businesses for assistance to “mitigate the economic and other social effects caused by the commercial fishery failure, as determined by the Secretary on August 10, 2006.”

**Wildland Fire Management:** Provides a combined \$400 million for the Bureau of Land Management and the U.S. Forest Service for “urgent wildland fire suppression activities.”

**Secure Rural Schools Act (Forest County Payments):** Provides \$425 million to be used for one-time payments to be allocated to states under the Secure Rural Schools and Community Self-Determination Act of 2000. This program provides a funding stream (known as forest county payments) to counties with large amounts of Bureau of Land Management land, in order to compensate for the loss of receipt-sharing payments on this land caused by decreased revenue from timber sales due to environmental protections for endangered species. The authorization for these forest county payments expired at the end of FY 2006, and counties received their last payment under the Act in December 2006.

**LIHEAP:** Provides \$400 million for the Low-Income Home Energy Assistance Program (LIHEAP).

**Avian Flu:** Provides \$969 million for the Department of HHS to continue to prepare and respond to an avian flu pandemic. Of this funding, \$870 million is to be used for the development of vaccines.

**H5N1 Vaccine Compensation:** Provides \$25 million to compensate individuals for injuries caused by the H5N1 vaccine, which is a flu vaccine.

**Capitol Power Plant:** Provides \$50 million to the Capitol Power Plant for asbestos abatement and safety improvements.

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### **Other Matters (Title IV):**

*In millions*

	<b>Request</b>	<b>Senate</b>	<b>House</b>	<b>Conference</b>
Farm Service Agency	0	75	48	38
Office of Federal Housing Enterprise Oversight	0	5	8	6

### **Items of Note:**

**FDA Office of Women's Health:** Provides \$4 million for the Office of Women's Health at the Food and Drug Administration.

**Rescinding Homeland Security Funding:** Rescinds \$31 million in funding from the FY06 Homeland Security bill.

**Payment to Widow of Rep. Norwood:** Provides \$165,200 to Gloria W. Norwood, the widow of former Rep. Charlie Norwood (R-GA) who passed away last month. In the Emergency Supplemental Appropriations Act of 2005 (H.R. 1268), Congress provided \$162,100 to Doris Matsui, the widow of former Rep. Robert Matsui.

**NTSB Lease:** Amends a provision in the continuing resolution, which provided \$78.9 million for the National Transportation Safety Board, Salaries and Expenses, to "include amounts necessary to make lease payments due in FY 2007 on an obligation incurred in 2001 under a capital lease."

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### **Agriculture (Title V):**

*In millions*

	<b>Request</b>	<b>Senate</b>	<b>House</b>	<b>Conference</b>
Emergency Conservation Program	0	35	20	20
Dairy Assistance	0	95		20
Emergency Grants to Assist Low-Income Migrant and Seasonal Workers	0	0	0	21
Farm Service Agency, Administrative Expenses	0	0	0	30

**Note:** The above chart includes only discretionary spending and not new agriculture entitlement spending.

## **Items of Note:**

**Crop Disaster Assistance:** Provides agriculture assistance to producers experiencing crop losses in 2005, 2006, or 2007 due to bad weather. Farmers experiencing losses in more than one year would be required to choose only one year for which they wish to receive loss compensation. A large portion would be provided in the form of direct payments to agriculture producers who experienced more than 35% crop loss in expected production. The payment would be 50% of the market price. Producers would not be eligible for these payments if they had failed to purchase available crop insurance. The bill ensures that these disaster payments would not exceed 95% of a crop's worth in the absence of hurricane destruction.

**Livestock Assistance:** Provides compensation for livestock losses in 2005, 2006, and 2007, due to a disaster, including wildfire in the state of Texas and other states and blizzards in the states of Colorado, Kansas, Nebraska, New Mexico, and Oklahoma. Cattlemen experiencing losses in more than one year would be required to choose only one year for which they wish to receive loss compensation.

**Livestock Indemnity Payments:** Provides livestock indemnity payments to producers on farms experiencing livestock losses due to hurricanes, floods, anthrax, and wildfires in the state of Texas and other states, and blizzards in the states of Colorado, Kansas, Nebraska, New Mexico, and Oklahoma. Cattlemen experiencing losses in more than one year would be required to choose only one year for which they wish to receive loss compensation. Payments would be not less than 30% of the market value of the livestock on the day before their death.

**Emergency Conservation Program:** Authorizes \$20 million to the Secretary of Agriculture for assistance through the Emergency Conservation Program for cleanup and restoration of farm and agricultural production lands.

**Milk Income Loss Contract (MILC) Program:** Extends for one month authorization of MILC Program extending it through September 2007.

**Dairy Assistance:** Provides \$20 million to make payments to dairy producers for dairy production losses in disaster counties.

**Low Income Migrant Workers:** Provides \$21 million for grants to public agencies and private organizations (501(c)(3)s) that have experience in providing emergency services to low-income migrant and seasonal farm workers after there has been a local, state or national emergency that has caused these workers to lose income.

**Farm Service Agency:** Provides \$30 million for administrative expenses (for salaries and expenses) at the Farm Service Agency.

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## **SCHIP Funding (Title VI):**

**SCHIP:** Provides “such funding, but not to exceed.” \$650 million to the Secretary of HHS to provide assistance to the SCHIP “shortfall states” (see list below), in the form of an amount “as the Secretary determines will eliminate the estimated shortfall.” The Majority has indicated they intend the funding to be a one-time appropriation and not direct spending included in a supplemental to contravene the Majority’s own PAYGO rules. However, the use of an emergency designation for this type of spending may be unprecedented—RSC staff has found no instance where Medicare, Medicaid, and SCHIP have been designated as an emergency. (CBO scores this provision as costing \$393 million because of the way the program interacts with Medicaid).

The State Children’s Health Insurance Program (SCHIP) is a block grant provided to states for health care coverage for low-income children in families with income above Medicaid eligibility levels. States receive a fixed federal contribution, which is intended to last for three years, and any unused funds at the end of that time period are redistributed to states that have used the entire grant. Some states experience a “shortfall” in funding, in light of decisions to insure adults, pregnant mothers, and children from families with significantly more income than the poverty level (350% in one state). According to a 2006 CRS report, the following 14 states will likely have a shortfall in FY 2007: Alaska, Georgia, Illinois, Iowa, Maine, Maryland, Massachusetts, Minnesota, Mississippi, Missouri, Nebraska, New Jersey, Rhode Island, and Wisconsin.

**CMS Regulations:** Prohibits the Secretary of Health and Human Services from implementing a proposed regulation related to SCHIP and Medicaid that would limit Medicaid payments for graduate medical education to hospitals.

**Tamper-Resistant Prescription Pads:** Prohibits Medicaid payments for amounts expended for covered outpatient drugs, unless the prescription is in written form on a tamper-resistant pad. Also, extends the Pharmacy Plus waiver, that allows states to seek waivers of federal Medicaid law and regulations under certain circumstances. According to the Joint Explanatory Statement, these provisions are intended to “offset the cost of blocking the Medicaid rules” outlined above.

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## **Minimum Wage/Tax Provisions:**

**Minimum Wage Increase:** Mandates that employers give some of their employees’ a 41% raise over two years. Specifically, the federal minimum wage would increase from \$5.15-per-hour to \$7.25-per-hour over two years. The minimum wage would first increase to \$5.85 sixty days after this bill’s enactment, then to \$6.55 one year after the first increase, then to \$7.25 one year after the second increase. **Yields \$16.5 billion in private-sector costs over five years.**

**Mariana Islands:** Applies a federal minimum wage to the Commonwealth of the Northern Mariana Islands and increases it steadily until it matches the new \$7.25 mandate for the 50 states. The remaining U.S. territories would remain fully or partially exempt from the minimum wage, as under current law. It is unclear why the Mariana Islands would be given harsher treatment than the other U.S. territories.

**NOTE: The minimum wage provisions are identical to those in the House-passed Supplemental, which themselves were identical to those passed as part of H.R. 2 in the Democrats' 100-Hour Agenda.**

To see the RSC Legislative Bulletin on H.R. 2, which includes more background on the minimum wage and conservative opposition to it, visit this webpage:  
[http://www.house.gov/hensarling/rsc/doc/LB\\_011007\\_minwage100hour.doc](http://www.house.gov/hensarling/rsc/doc/LB_011007_minwage100hour.doc).

**Work Opportunity Tax Credit (WOTC):** Extends the expiration date for the WOTC (currently the end of 2007) to August 31, 2011, and expands its application. The WOTC allows employers to claim the maximum \$2,400 credit when they hire individuals from nine “target” groups—such as families receiving public assistance, high-risk youths, ex-felons, qualified veterans, and food stamp recipients age 18-39.

**Section 179 Expensing:** Extends the sunset date for one year (from the end of 2009 to the end of 2010) for the expanded Section 179 expensing provisions in current law. Presently, small businesses may expense—i.e., deduct in the first year—up to \$112,000 of certain asset investments, phasing out dollar-for-dollar to the extent the business’ annual investments exceed \$450,000. This provision would also immediately increase the \$112,000 and \$450,000 thresholds to \$125,000 and \$500,000, and index them for inflation through and including 2010. After 2010, the expensing limit will decline to \$25,000 and the phase-out threshold will decline to \$200,000.

**Restaurant Tip Credit:** Extends the restaurant tip credit at the current level of \$5.15 per hour. For tipped employees, the Fair Labor Standards Act (FLSA) provides that the \$5.15-per-hour minimum wage may be reduced to \$2.13, if the combination of tips and cash income equals the federal minimum wage. Employers still have to pay taxes (under the Federal Insurance Contributions Act--FICA) on tip income of their employees. A business tax credit is provided equal to an employer’s FICA taxes paid on tips in excess of those treated as wages for purposes of meeting the minimum wage requirements of FLSA. If this provision were not included in the bill, restaurants would not be able to claim the tip credit on payroll taxes paid for tipped employees on income between \$5.15 and a new higher hourly minimum wage.

**Credits against the Alternative Minimum Tax (AMT):** Allows the Work Opportunity Tax Credit and the restaurant tip credit to offset tax liability under the AMT beginning in tax-year 2007. Generally, business tax credits cannot be used to offset any liability under the AMT.

**Self-Employment Taxes of Married Couples:** Allows a qualified joint venture, whose only members are a husband and wife filing a joint return, not to be treated as a partnership for tax purposes (as they currently are required to do).

**Section 179 Expensing in the GO Zone:** Extends by one year (through the end of 2008) the increased section 179 small business expensing for qualified property in the Gulf Opportunity (GO) Zone.

**Housing Credits in GO Zone:** Extends the increased cap on special GO Zone low-income housing credits, which had been implemented for the hurricane-affected states for 2006 through 2008, for two years (through the end of 2010). Also extends the GO Zone's designation as a "difficult to develop area" through the end of 2010—which has implications for increasing the amount of credits available for investors in projects in the area.

**CDBG Housing Projects:** Allows low-income (Community Development Block Grant—CDBG) housing projects to receive additional categories of federally-subsidized loans without facing a reduction in tax credits. Under current law, low-income housing projects that receive certain federally-subsidized loans must either accept a lower credit rate or make an offsetting reduction in the property's basis.

**Mortgage Revenue Bonds:** Allows the proceeds of Mortgage Revenue Bonds to be used to refinance an existing mortgage, if repairs or reconstruction costs total at least 25% of the owner's adjusted basis in the property. Generally, current law does not allow the proceeds of Mortgage Revenue Bonds to be used to refinance existing mortgages.

**State and Local Implementation:** Directs the Comptroller General to report to Congress on the practices employed by state and local governments in allocating and using tax incentives provided by this bill and the Gulf Opportunity Zone Act of 2005.

**S Corporations:** Provides nearly \$900 million over eleven years of tax-relief provisions for S Corporations (a certain class of small corporations), such as removing the capital gains of S Corporations from the definition of passive investment income for tax purposes and eliminating all earnings and profits attributable to years before 1983 for S Corporations.

**Capital Gains Tax Rate for Certain Minors and Adults:** Beginning in tax-year 2007, taxpayers would be denied the lowest maximum capital gains and dividends tax rate—5% in 2007, 0% in 2008, 0% in 2009, 0% in 2010, and 8% or 10% thereafter—if they are under age 19 (age 24, in the case of a student) and if their earned income is less than half of their financial support (i.e., if they are more than 50% dependent on their family's financial support).

**Extends the suspension of interest payments due to the IRS:** Beginning six months after this legislation's enactment, taxpayers who underpay their taxes and are subject to interest penalties on the unpaid amounts would not have their interest payments suspended

until 36 months after the IRS has failed to contact the taxpayers about the underpayments—as opposed to the current-law 18 months.

**Collection Due Process Procedures:** Changes the “collection due process procedures” with regards to employment tax liabilities. Currently, the IRS is allowed to seize a taxpayer’s physical property given a federal tax lien for underpayments of employment taxes. Prior to seizing the property, however, the IRS has to notify the taxpayer that they have a right to a collection due process (CDP) hearing. This bill would allow the IRS to seize property without first giving the taxpayer a CDP hearing—but only for taxpayers who have already requested a CDP hearing within the prior two years. Taxpayers who have NOT requested a CDP hearing within the prior two years would NOT be subject to the new requirements allowing pre-hearing seizures of property. The IRS would still have to send warning notices, and the hearing would still have to be offered—but not necessarily before the property seizure.

**IRS User Fees:** Makes IRS user fees—such as fees for opinion letters or determination letters—permanent.

**Bad Checks and Money Orders:** Increases the fee on sending checks and money orders to the IRS that are “not duly paid.” Currently, the fee for providing a bad check or money order to the IRS is 2% of the amount of such check; except that if the amount of such check is less than \$750, the penalty is \$15 or the amount of such check, whichever is the lesser. This provision would raise the threshold for the lesser fee from \$750 to \$1,250 and would raise the \$15 figure to \$25.

**Expanded Penalties for Return Preparers:** Expands and increases the penalties for tax return preparers who understate a taxpayer’s liability (because of unreasonable positions that could not be sustained on their merits, reckless or intentional disregard for the law, or willful intent to understate tax liability) on all types of tax returns, such as those for nonprofit entities, estate taxes, and employment taxes—not just income taxes, as under current law.

**Erroneous Refund Claim Penalty:** Creates a new civil penalty for making an unreasonable, excessive claim for an income tax refund (excluding the Earned Income Tax Credit). The penalty would be 20% of the excessive amount—i.e., the amount above the proper refund.

**Corporate Estimated Tax Shifts:** Increases the corporate estimated tax payments due in the summer of FY2012 for corporations with assets of at least \$1 billion. This provision does not yield a net tax increase; it merely requires a higher quarterly payment of corporate estimated taxes in the summer of 2012, and a correspondingly lowered estimated payment thereafter. Under current law, the estimated payments due in the summer of FY2012 have to be 106.25% of what would otherwise be paid (100% = one quarter of the year’s estimated tax payment due). This provision of the Supplemental would increase that amount from 106.25% to 112.75%, requiring businesses to pay even more of their taxes early.



**Additional Background:** Most of the above provisions have already passed the House in this exact, or similar, format. For more information on these provisions, as they were included in other legislation, see:

- The RSC Legislative Bulletin on H.R. 976:  
[http://www.house.gov/hensarling/rsc/doc/LB\\_021607\\_smallbiztax.doc](http://www.house.gov/hensarling/rsc/doc/LB_021607_smallbiztax.doc)
- The RSC Legislative Bulletin on H.R. 1562:  
[http://www.house.gov/hensarling/rsc/doc/LB\\_032707\\_KatrinaTaxAmended.doc](http://www.house.gov/hensarling/rsc/doc/LB_032707_KatrinaTaxAmended.doc)
- The RSC Legislative Bulletin on H.R. 1591:  
[http://www.house.gov/hensarling/rsc/doc/LB\\_032207\\_IraqSuppUpdated.doc](http://www.house.gov/hensarling/rsc/doc/LB_032207_IraqSuppUpdated.doc)
- The RSC Legislative Bulletin on H.R. 1677:  
[http://www.house.gov/hensarling/rsc/doc/LB\\_041707\\_suspensions.doc](http://www.house.gov/hensarling/rsc/doc/LB_041707_suspensions.doc).

**Possible Conservative Concerns:** Some conservatives might be concerned that the federal minimum wage itself is anti-capitalist, since it prevents an employer and a potential employee from engaging in free-market labor negotiations. Furthermore, quickly-increased labor costs unrelated to business conditions will encourage or force employers to fire employees, reduce working hours for existing employees, and/or postpone plans to hire additional employees. Conservatives may also be concerned with the pace of this increase, **which would mandate that employers give certain employees a 41% raise over two-plus years, yielding \$18 billion (according to CBO) in intergovernmental and private-sector costs over five years—which is not nearly offset by the tax relief paired with the minimum wage increase.**

Some conservatives may be concerned that this title contains some *permanent* tax and revenue increases on some taxpayers to “pay for” certain *temporary* tax cuts for other taxpayers. **Additionally, some conservatives may be concerned that the small business tax-cut provisions—\$4.84 billion over eleven years—do not even come close to offsetting the costs of the minimum wage increase—\$16.5 billion for small businesses over five years.** Furthermore, the bill chips away at the capital gains and dividends tax cut (by preventing certain students under age 24 and certain non-students under age 19 from getting the lowest rate available under current law), while effectively increasing interest penalties for certain taxpayers, and accelerating certain quarterly tax payments for corporations.

**Revenue Estimate:** According to the Joint Committee on Taxation, the minimum wage and tax portion of the Supplemental includes \$4.844 billion in tax relief provisions over eleven years and \$4.899 billion in tax and revenue increases over eleven years, yielding a net tax and revenue increase of \$55 million over eleven years. Private-sector and intergovernmental costs of raising the minimum wage are estimated to be \$18 billion over five years.

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